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8 Attorneys for Plaintiff

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE DIVISION
12

13 UNITED STATES OF AMERICA,)	No. CR 04-20126 JW/HRL
14 Plaintiff,)	
15 v.)	PLEA AGREEMENT
16 FLORIN HORICIANU,)	
17 Defendant.)	
18)	

19 I, Florin Horicianu, and the United States Attorney's Office for the Northern District of
20 California (hereafter "the government") enter into this written plea agreement (the "Agreement")
21 pursuant to Rules 11(c)(1)(A) and 11(c)(1)(B) of the Federal Rules of Criminal Procedure:

22 The Defendant's Promises

23 1. I agree to plead guilty to Counts Five and Seven of the captioned indictment
24 charging me with Transmitting Interstate Threatening Communications, in violation of 18 U.S.C.
25 § 875(c).

26 I agree that the elements of Transmitting Interstate Threatening Communications are that: (1)
27 I knowingly transmitted in interstate commerce; (2) a communication containing a threat to
28 injure the person of another; and (3) with the specific intent to threaten to injure the person of

1 another. I am further aware that the maximum penalties for each count of this offense are as
2 follows:

- | | | | |
|---|----|---------------------------------|------------------------------|
| 3 | a. | Maximum prison sentence | 5 years |
| 4 | b. | Maximum fine | \$250,000 or twice the gross |
| 5 | | | gain or loss whichever is |
| | | | greater |
| 6 | c. | Maximum supervised release term | 3 years |
| 7 | d. | Mandatory special assessment | \$100 |
| 8 | e. | Restitution | Determined by court |

9 2. I agree that I am guilty of the offenses to which I will plead guilty, and I agree that
10 the following facts are true:

11 On May 28, 2004, I transmitted two e-mail messages from the Easy Internet Café in New
12 York City to servers at eBay, located in San Jose, California. My e-mail messages to eBay's
13 Chief Executive Officer and President, and eBay's Founder and Chairman of the Board stated in
14 part that I would haunt and hurt them and their families and that I would locate them anywhere.
15 This message, reproduced in the indictment, is reflected in Count Five. On the same day, I
16 transmitted a similar e-mail message, which is also reflected in Count Seven, to another
17 individual.
18
19

20 My offense involved more than two threats because I sent multiple versions of the similar
21 threatening e-mail message to two individuals, as reflected in Counts Five and Seven. These
22 communications were in violation of a previously entered state court injunction, which was
23 entered by the Santa Clara Superior Court in May 2003.
24

25 In June 2004, in a voluntary statement with federal agents, I admitted transmitting the e-mail
26 communications in this case from Easy Internet Café in New York City to eBay in San Jose,
27 California.
28

1 3. I agree to give up all rights that I would have if I chose to proceed to trial,
2 including the rights to a jury trial with the assistance of an attorney; to confront and cross-
3 examine government witnesses; to remain silent or testify; to move to suppress evidence or raise
4 any other Fourth or Fifth Amendment claims; to any further discovery from the government; and
5 to future DNA testing of physical evidence in the government's possession; and to pursue any
6 affirmative defenses and present evidence.
7

8 4. I agree to give up my right to appeal my conviction(s), the judgment, and orders of
9 the Court. I also agree to waive any right I may have to appeal any aspect of my sentence,
10 including any orders relating to forfeiture and/or restitution.
11

12 5. I understand that under 18 U.S.C. § 3600, I have the right, under certain
13 circumstances, to post-conviction DNA testing of evidence in the government's possession in
14 support of a claim that I am actually innocent of the offense(s) to which I am pleading guilty
15 under this plea agreement. I agree to waive my right to post-conviction DNA testing and my
16 right to file a petition under 18 U.S.C. § 3600 to compel that testing.
17

18 6. I agree not to file any collateral attack on my conviction or sentence, including a
19 petition under 28 U.S.C. § 2255, at any time in the future after I am sentenced, except for a claim
20 that my constitutional right to the effective assistance of counsel was violated.
21

22 7. I agree not to ask the Court to withdraw my guilty plea at any time after it is
23 entered.
24

25 8. I agree that the Court will calculate my sentencing range under the Sentencing
26 Guidelines. I understand that the Court, while not bound to apply the Guidelines, must consult
27 those Guidelines and take them into account when sentencing. I agree that regardless of the
28 sentence that the Court imposes on me, I will not be entitled, nor will I ask, to withdraw my

1 guilty pleas. I also agree that the Sentencing Guidelines range will be calculated as follows and
2 that I will not ask for any other adjustment to or reduction in the offense level or for a downward
3 departure from the Guidelines range, except as provided in paragraph 8(f) and (g) below:
4

5 a. Base Offense Level, U.S.S.G. § 2A6.1(a)(1): 12

6 b. More than two threats, USSG § 2A6.1(b)(2): +2

7 c. Violated court order, U.S.S.G. § 2A6.1(b)(3): +2

8 d. Acceptance of responsibility: -2
9 (If I meet the requirements of
10 U.S.S.G. § 3E1.1)

11 e. Total Adjusted Offense Level 14

12 f. Acceptance of responsibility additional level: I reserve the right to seek a
13 one level reduction pursuant to U.S.S.G. § 3E1.1(b), and I understand that the government
14 reserves the right to oppose any such motion.
15

16 g. Downward Departure Motion: I reserve the right to file one motion for a
17 downward departure pursuant to U.S.S.G. § 5K2.13 (diminished capacity), and I understand that
18 the government reserves the right to oppose any such motion. I agree that, regardless of any
19 other provision in this agreement, the government may and will provide to the Court and the
20 Probation Office all information relevant to the charged offenses or the sentencing decision. I
21 also agree that the Court is not bound by the Sentencing Guidelines calculations above, the Court
22 may conclude that a higher guideline range applies to me, and, if it does, I will not be entitled,
23 nor will I ask, to withdraw my guilty pleas.
24

25 h. Other Conditions: I further agree that in addition, to any other terms of
26 supervised release or probation imposed by the Court, I agree to abide by the following
27 conditions to be imposed by the Court at sentencing and as part of any term of supervised release
28

1 or probation: (a) I will not travel to the Northern District of California or the District of Nevada.
2 (b) I shall not have any contact or communication with eBay or any individuals affiliated with or
3 employed by eBay (including but not limited to Chief Executive Officer and President Meg
4 Whitman and Founder and Chairman of the Board Pierre Omidyar), either directly or indirectly
5 (including through any family members or friends), including but not limited to, personal
6 contact; telephone, mail, or electronic mail contact; or any other written form of communication;
7 and including any threatening, harassing, annoying, or intimidating conduct or further demands
8 for money by the defendant directed to eBay and its employees or other individuals affiliated
9 with eBay. I understand that this provision includes and is not limited to the eBay Board of
10 Director members, any other eBay employees, and other individuals to be specified at sentencing.
11 (c) I shall stay at least five hundred (500) yards away from any function involving eBay, and any
12 persons affiliated with eBay. (d) I shall take any medication, and participate in mental health
13 counseling, as directed by the probation officer and/or my doctor.
14
15
16

17 9. In return for the government's promises set out below, I agree to pay restitution
18 for all the losses caused by all the schemes or offenses with which I was charged in this case, and
19 I agree that the amount of restitution will not be limited to the loss attributable to the counts to
20 which I am pleading guilty, pursuant to 18 U.S.C. § 3663(a)(3). I agree that I will make a good
21 faith effort to pay any fine, forfeiture or restitution I am ordered to pay. Before or after
22 sentencing, I will, upon request of the Court, the government, or the U.S. Probation Office,
23 provide accurate and complete financial information, submit sworn statements and give
24 depositions under oath concerning my assets and my ability to pay, surrender assets I obtained as
25 a result of my crimes, and release funds and property under my control in order to pay any fine,
26 forfeiture, or restitution. I agree to pay the special assessment at the time of sentencing.
27
28

1 10. I agree not to commit or attempt to commit any crimes before sentence is imposed
2 or before I surrender to serve my sentence. I also agree not to violate the terms of my pretrial
3 release (if any); intentionally provide false information to the Court, the Probation Office,
4 Pretrial Services, or the government; or fail to comply with any of the other promises I have
5 made in this Agreement. I agree not to have any contact with any victims or witnesses in this
6 case, either directly or indirectly, before and after I am sentenced. This includes, but is not
7 limited to, personal contact; telephone, mail, or electronic mail contact; or any other written form
8 of communication; and includes any harassing, annoying, or intimidating conduct by me directed
9 to any victims or witnesses. I agree that the Court should include this agreement as a condition
10 of my supervised release term. I agree not to have any contact with any victims or witnesses in
11 this case, either directly or indirectly, before and after I am sentenced. This includes, but is not
12 limited to, personal contact; telephone, mail, or electronic mail contact; or any other written form
13 of communication; and includes any harassing, annoying, or intimidating conduct by me directed
14 to any victims or witnesses. I agree that the Court should include this agreement as a condition
15 of my supervised release term. I agree that, if I fail to comply with any promises I have made in
16 this Agreement, then the government will be released from all of its promises in this agreement,
17 including those set forth in paragraphs 13 through 15 below, but I will not be released from my
18 guilty plea.

23 11. I agree that this Agreement contains all of the promises and agreements between
24 the government and me, and I will not claim otherwise in the future.

26 12. I agree that this Agreement binds the U.S. Attorney's Office for the Northern
27 District of California only, and does not bind any other federal, state, or local agency.

28 The Government's Promises

1 13. The government agrees to move to dismiss any open charges pending against the
2 defendant in the captioned indictment at the time of sentencing.

3 14. The government agrees not to file or seek any additional charges against the
4 defendant that could be filed as a result of the investigation that led to the captioned indictment.

5 15. The government agrees to recommend the Guidelines calculations set out above.

6 The Defendant's Affirmations

7
8 16. I confirm that I have had adequate time to discuss this case, the evidence, and this
9 Agreement with my advisory attorneys, and that they has provided me with all the legal advice
10 that I requested.

11
12 17. I confirm that while I considered signing this Agreement, and at the time I signed
13 it, I was not under the influence of any alcohol, drug, or medicine.

14
15 18. I confirm that my decision to enter a guilty plea is made knowing the charges that
16 have been brought against me, any possible defenses, and the benefits and possible detriments of
17 proceeding to trial. I also confirm that my decision to plead guilty is made voluntarily, and no
18 one coerced or threatened me to enter into this agreement.

19 Dated: May 3, 2005

20 _____
21 FLORIN HORICIANU
22 Defendant, Pro Se

23 _____
24 KEVIN V. RYAN
25 United States Attorney

26 Dated: May 3, 2005

27 _____
28 MARK L. KROTOSKI
Assistant United States Attorney

Dated: May 3, 2005

H. H. (SHASHI) KEWALRAMANI

Assistant United States Attorney

We have fully explained to Florin Horicianu all the rights that a criminal defendant has and all the terms of this Agreement. In our opinion, Mr. Horicianu understands all the terms of this Agreement and all the rights he is giving up by pleading guilty, and, based on the information now known to me and us, his decision to plead guilty is knowing and voluntary.

Dated: May 3, 2005

JAY RORTY
Assistant Federal Public Defender
Attorney for Defendant

Dated: May __, 2005

ANGELA HANSEN
Assistant Federal Public Defender
Attorney for Defendant